

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5320 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAJESH KUMAR GARG

Versus

GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD.

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Appearance:

MR BP TANNA for Petitioner

M/S TRIVEDI & GUPTA for Respondent No. 1, 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/02/98

ORAL JUDGEMENT

Petitioner before this Court is the former employee of the respondent Corporation (hereinafter referred to as "the Corporation"). The petitioner was employed as Junior Geophysicist on 1st August, 1984 and he continued to serve as such till 9th May, 1991. The petitioner proceeded on leave to go to his home town at Roorkee. Leave was granted to the petitioner for the

period upto 31st August, 1991. It appears that on 17th August, 1991, the petitioner sought extension of leave with effect from 1st September, 1991 to 30th November, 1991. By a further communication dated 27th November, 1991, he sought further extension of leave with effect from 1st December, 1991 to 31st January, 1992. None of his applications either of 17th August, 1991 or of 27th November, 1991 was accepted by the Corporation. Thus, the petitioner remained absent from duty without leave from 1st September, 1991. On 20th December, 1991, a communication was sent to the petitioner to report for duty within five days from the date of receipt of the said communication. Reminder was sent on 10th January, 1992 and the petitioner was called upon to report for duty latest by 20th January, 1992. In response to the said notice, the petitioner reported for duty on 22nd January, 1992. It appears that the petitioner was not permitted to resume duty on 22nd January, 1992 though he attended the office. It is believed that during his absence, the petitioner went abroad to foreign country and was gainfully employed there.

Sometime in the month of November, 1990, the petitioner had applied for No Objection Certificate for going abroad. As a condition precedent for grant of such no objection certificate, the petitioner was made to sign a declaration (copy of which is at page 41 of the paper book). In the said declaration, it is stated that in the event the petitioner failed to resume duty immediately after the expiry of the period of leave that may be granted to him, said declaration may be considered to be his resignation from the service of the Corporation and the Corporation may proceed further as if the petitioner had resigned from the service of the Corporation. It is not brought on the records of the matter whether pursuant to such application, the petitioner was granted no objection certificate or not. It is, however, undisputed that the petitioner did not apply for leave for going abroad and no such leave was ever granted to the petitioner. Since the petitioner failed to resume on 20th January, 1992 as referred to hereinabove, above referred declaration was pressed into service and under the impugned order dated 11th August, 1992, the petitioner was held to have resigned from the service of the Corporation with effect from 13th May, 1991 and he was considered to have been relieved from service of the Corporation on 13th May, 1991. Feeling aggrieved, the petitioner has preferred this petition.

Before I deal with the arguments of the parties hereto, it would not be out of place to mention here that

after the above petition was admitted to final hearing, parties hereto settled the dispute and filed consent terms before the Court. Under the said consent terms signed on 22nd October, 1992, the petitioner agreed to voluntarily resign from the service of the Corporation with effect from 31st October, 1992. The Corporation agreed to withdraw the impugned order of 11th August, 1992 and to pay the salary for the month of August, 1991; to consider the petitioner's absence from duty from 1st September, 1991 to 20th January, 1992 as leave admissible and to pay the salary for the said period; if no leave were found to be admissible, such of the period would be treated as on leave without pay, to pay; the petitioner full salary and allowances for the period commencing from 22nd January, 1992 till 31st October, 1992, to pay to the petitioner all the amounts due by way of contributory provident fund, gratuity, difference of dearness allowance and the bonus, if found payable. On presentation of the said consent terms, the petition was allowed in terms of the consent terms. However, liberty was reserved to the petitioner to revive the petition. It appears that the petitioner was not satisfied in respect of the payments made by the Corporation under the consent terms. He, therefore, made a civil application no. 924 of 1993 for revival of the petition. Said application was granted on 16th September, 1994 and the present petition was revived. Mr. Vyas, the learned advocate appearing for the Corporation has submitted that in fact, all the amounts due and payable to the petitioner under the consent terms were paid by the Corporation. However, part of such amount was not paid within the period stipulated. Be that as it may, once the petition is revived, the fact whether the consent terms were complied with or not would become otiose.

Mr. Tanna, the learned advocate appearing for the petitioner has submitted that the declaration given by the petitioner in the month of November, 1990 could not have been pressed into service. Such declaration cannot be treated as voluntary resignation tendered by an employee. Further, the petitioner had never gone abroad as anticipated. He had gone on leave at Roorkee to attend his ailing father and, therefore, also, said declaration could not have been treated as resignation tendered by the petitioner. Mr. Vyas has submitted that it is believed that during the period of his leave, the petitioner had gone abroad and was probably gainfully employed there. He has submitted that the petitioner was called upon to inform the Corporation whether during the period he had gone abroad and to produce copy of his passport. The petitioner, under communication dated 19th

February, 1992 did inform the Corporation that during the period of his leave/absence, he had gone abroad on account of unavoidable circumstances. However, he kept back his passport and did not produce copy thereof for perusal by the Corporation. Mr. Vyas has, therefore, submitted that since the petitioner had gone abroad without permission of the Corporation, the Corporation has rightly availed of the declaration given by the petitioner in the month of November, 1990 and has considered the petitioner as having resigned from the service with effect from 13th May, 1991.

I am afraid, I cannot accept the contention raised by Mr. Vyas. The declaration given by the petitioner on 12th November, 1990 by no stretch of imagination can be said to be voluntary resignation tendered by the petitioner. Further, it is not brought on the records that the petitioner had gone abroad as anticipated and was gainfully employed there. In that view of the matter, said declaration could not have been pressed into service. I am, therefore, of the view that the impugned order made on 11th August, 1992 cannot be sustained and requires to be quashed and set aside. The impugned order dated 11th August, 1992 is, therefore, quashed and set aside. The Corporation is directed to reinstate the petitioner in service within a period of six weeks from today.

The question that now arises is of consequential benefits. Ordinarily, with an order of reinstatement, the petitioner would also be entitled to backwages. In the instant case, however, no backwages can be ordered to be granted on account of following reasons :

- (a) The petitioner cannot be said to be free from blame. The impugned order has been invited by the petitioner on account of his unauthorized absence without leave for the period since 1st September, 1991 till 22nd January, 1992.
- (b) Inspite of his being called upon, the petitioner has not produced his passport for perusal by the Corporation and has been kept by him.
- (c) Mr. Tanna has fairly conceded that the petitioner has been gainfully employed. However, the extent of his gainful employment or the gains earned by him from such employment are not known to Mr. Tanna.

Irrespective of the extent of the employment of

the petitioner and the gains earned by him through such employment, I do not consider it just and expedient to award any backwages to the petitioner. Since the petitioner has received his terminal benefits pursuant to the compromise arrived at by the petitioner and the Corporation on 22nd October, 1992, it is in the fitness that the petitioner shall refund the said amount on his reinstatement in service. The petitioner has also retained the said amount for nearly five years. It is, therefore, ordered that the petitioner shall refund the amount of provident fund and gratuity received by him alongwith interest calculated at the rate of 10% p.a. from the date of receipt of such amount till the date of refund within a period of six months from the date of his reinstatement in service. In the event the petitioner fails to refund the said amount and the interest within six months as ordered hereinabove, the said amount shall carry further interest calculated at the rate of 8% per annum from the date of this order till the date of payment. The petitioner shall be entitled to retain the amount of salary and bonus that he may have received under the compromise referred to hereinabove. It is further directed that the period of petitioner's absence from service from 1st November, 1992 till the date of his reinstatement shall be regularized as extraordinary leave without pay.

Petition is allowed accordingly. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

Vyas      \*\*\*\*\*